

IN THE MATTER OF : BEFORE THE  
JOSEPH EAPEN : HOWARD COUNTY  
 : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
 : BA Case No. 05-047V

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**DECISION AND ORDER**

On February 27 and June 5, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Joseph Eapen, Petitioner, for a variance to reduce the 30-foot rear setback to 14 feet for a deck to be located in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Joseph Eapen testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8232 Cornerstone Way, is located in the 1<sup>st</sup> Election District on the northwest corner of the intersection of Cornerstone Way and Green Tree Way in the Arbor Woods subdivision in ElkrIDGE (the "Property"). The Property is identified on Tax Map 37,

Block 14 as Parcel 149, Lot 25.

The Property is a pentagonal-shaped lot consisting of about 7,495 square feet. The lot has about 67 feet of frontage on Cornerstone Way, 79.51 feet of frontage on Green Tree Drive, and 33.79 feet of frontage is angled to face the intersection of the two streets. The lot is 83.96 feet deep along its northwest side boundary and 58.15 feet wide across its rear lot line.

The Property is improved with a two-story residential dwelling that faces Cornerstone Way and is located 20 feet from Cornerstone Way, 25 feet from Green Tree Drive, 15 feet from the northwest side lot line, and 30 feet for the rear lot line. The house is about 35 feet deep and 45 feet wide.

The house is accessed from a paved driveway from Cornerstone Way leading to a two-car attached garage at the west side of the house. A 14' wide by 12' deep sunroom is attached to the center of the rear of the house. To the west of the sunroom is a 15' wide by 12' deep deck with steps that extend 4'7" toward the rear and west side of the lot. The north corner of the steps is about 13 feet from the rear lot line. The north corner of the deck is about 18.5 feet from the rear lot line. A row of trees is located along the rear lot line. The topography of the Property is generally level.

2. The Petitioner, the owner of the Property, request s variance for the existing deck. At the June 5 hearing, the Petitioner amended his petition to eliminate the steps along the northeast side of the deck. With this amendment, the deck will be located 18 feet from the rear lot line. The deck will therefore encroach 12 feet into the 30-foot rear setback required by Section

110.D.4.d(1)(c)(i).<sup>1</sup>

3. Vicinal properties are also zoned R-SC and are part of the Arbor Woods subdivision. The subdivision plat submitted by the Petitioners (Exhibit 6) indicates that the Property is smaller and shallower than most of the properties in the area. The size of the Petitioner's home is typical of vicinal houses. Many homes in the area have comparably-sized decks.

4. Mr. Eapen testified that the contractor who built the deck failed to obtain a building permit for the deck after first building the sunroom. He stated that he will have the steps promptly removed from the northeast side of the deck.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the

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<sup>1</sup> Section 128.A.1.d permits a deck in the R-SC zone to encroach 10 feet into a rear setback. Practically speaking, then, the requested variance is of only two feet.

owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is smaller and shallower than most properties in the neighborhood. In addition, because it is located at the intersection of two public streets, the resulting building envelope is smaller than most of the other lots in the vicinity. Indeed, the existing house, which is

typical in size, barely fits within the current building envelope. Decks are permitted uses that are commonly found in the community. The 12' deep deck is of modest and reasonable size. In order to construct the deck, however, due to the small size and shallowness of the buildable area of the lot, it is necessary to encroach slightly into the rear setback. Consequently, I find that the size and shallowness of the Property are unique physical conditions that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The deck will be used for permitted residential purposes and will not change the nature or intensity of the use. The existing landscaping along the rear lot line will buffer the deck from the adjoining property. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size and shallowness of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed 12' deep deck is the minimum width feasible and will be located in the only area practical due to the size and shallowness of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **29<sup>th</sup> day of June 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Joseph Eapen for a variance to reduce the 30-foot rear setback to 18 feet for a deck to be located in an R-SC (Residential – Single Cluster) Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition submitted, as amended, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following conditions**:

1. The Petitioner shall cause the steps along the northeast side of the deck to be removed;  
and
2. The landscaping along the rear lot line will be maintained and replaced as necessary.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.